"But, while there is, therefore, no concluded contract as to the remuneration, it is plain that there existed between the parties a contract of employment under which Mr. Way was engaged to do work for Mr. Latilla in circumstances which clearly indicated that the work was not to be gratuitous. Mr. Way, therefore, is entitled to a reasonable remuneration on the implied contract to pay him quantum meruit."

We agree with the learned trial Judge that a fair reading of the entire letter of appointment would support the conclusion that it was the intention of the parties that Mr. Tay was to receive in addition to salaries and other benefits an incentive based on the profits of the Hatchery Division earned from year to year. The express provision for the payment of a commission which fails as a binding agreement because of the absence of the essential term as to the amount or rate of the commission is nevertheless a substantial factor in support of the implication of a contract to pay a *quantum meruit.* That the Employers had agreed to pay Mr. Tay a yearly incentive based on the profits was never in doubt.

With regard to the second ground of appeal, counsel for the Employers submitted that if there was an implied term in the contract of employment to pay Mr. Tay a *quantum meruit* this term was impliedly varied by Mr. Tay's omission since the start-up of the Hatchery in 1965 to 1975 to lay any claim to or make any provision in his divisional budgets for the *quantum meruit.* It was pointed out on behalf of the Employers that Mr. Tay as a manager of the Hatchery Division was not entitled, in line with other managers, to any commission and that he had received at all material times a bonus at the end of each year and the two additional bonuses we had referred to and which were based on merit. On that basis, counsel for the Employers submitted that if an officious bystander were to have asked the parties whether the contract to pay a *quantum meruit* was still binding, the parties would have answered in the negative. We do not think so at all. Mr. Tay who had not given the matter a moment's thought would probably have said yes. Certainly, the Employers would have answered yes. Mr. Arnet, the Managing Director of the Employers, in fact had honestly affirmed that he would have "done something about it," that is, he would have paid Mr. Tay his due, if he had known about it. It has to be stressed again that Mr. Tay was not only totally devoted to his work; he did not much care about his entitlements. On the question of bonuses, he had always left it to Mr. Arnet, as the latter frankly admitted in evidence. In these circumstances, it seems to us that the selfless inactivity of one party and the ignorance of the other party are very poor foundation to support any implied consensual variation of the contractual term to pay a *quantum meruit.*

We now turn to the appeal against the learned trial Judge's assessment of $80,000 and the imposition of interest at $20,000. It is clear to us that the parties had agreed to give Mr. Tay an incentive for his contributions to the profitability of the Hatchery Division which over the six years totalled $1.4 million after tax. Mr. Tay's role in the performance was crucial. The salesmen of the Employers used to get commission which, for example, for 1981 was $13,000. Mr. Arnet thought that $4,000 per year as the commission or incentive was reasonable, which would have amounted to $24,000 over the six years. On the other hand, Mr. Tay had claimed $162,369.10 on the basis of the number of chicks sold at two cents per chick commission. Half of this claim based on one cent per chick commission which was paid to the salesmen of the Employers would throw up the figure of some $81,000. We would ourselves therefore agree that $80,000 is a reasonable assessment in all the circumstances. We also think that the $20,000 interest is also fair.

For these reasons, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Michael B.B. Ong & Co.*

LEONG SZE HIAN v. TEO AI CHOO

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) April 19, 1983]

[Singapore – Civil Appeal No. 29 of 1982]

Land Law – Caveat – Application to remove – No action commenced by caveator – Lapse of 11 months – Removal of caveat on grounds of delay.

This was an appeal against the decision of Sinnathuray J. ([1982] 2 M.L.J. 12). The learned Chief Justice in an oral judgment allowed the appeal on the following grounds:

(a) the learned Judge was wrong in law in granting the plaintiff the orders requested without first determining

whether the claim on which the defendant's caveat No. CV/51305 was based did raise a serious question to be tried;

(b) the learned Judge was wrong in law in applying the doctrine of delay as a ground for removing the defendant's caveat No. CV/51305 in the circumstances of the case;

and held that the case of *Plimmer Bros.* v. *St. Maur*(1) might be distinguished and that in an application for the removal of a caveat, the court should consider whether there was a serious question to be tried. If the court were satisfied that there was, then the court would not order the removal of the caveat. The decision of the Privy Council in *Eng Mee Yong & Ors.* v. *Letchumanan*(2) was followed.

The Order of Court is reproduced below.

Cases referred to:

(1) *Plimmer Bros.* v. *St. Maur* (1906) 26 N.Z.L.R. 294.
(2) *Eng Mee Yong & Ors.* v. *Letchumanan* [1979] 2 M.L.J. 212.

COURT OF APPEAL.

Ronnie Quek Cheng Chye for the appellant.
Miss Molly Lim for the respondent.

"ORDER OF COURT

IN OPEN COURT

The 19th day of April 1983

THIS APPEAL coming on for hearing on the 19th day of 1983 in the presence of Counsel for the Appellant Mr. Ronnie Quek Cheng Chye and Counsel for the Respondent, Miss Molly Lim AND UPON READING the Record of Appeal herein AND UPON HEARING COUNSEL as aforesaid THIS COURT DOTH ORDER that:

(a) This Appeal be allowed.

(b) The Order of Court dated the 7th day of May 1982 made by the Honourable Mr. Justice T.S. Sinnathuray in Originating Summons No. 165 of 1982 be and is hereby set aside.

(c) There be no order as to costs in the proceedings in Originating Summons No. 165 of 1982.

(d) The Respondent to pay the Appellant the costs of this Appeal.

(e) The sum of $500.00 deposited by the Appellant with the Accountant-General by way of security for the Respondent's costs of this Appeal be paid out to the Appellant or to his solicitors.

Given under my hand this 26th day of April 1983.

Sd.
Asst. Registrar."

Solicitors: *Shook Lin & Bok; Chung & Co.*

RE ANNIE LIM

[O.C.J. (Chan Sek Keong J.C.) November 27, 1986]

[Singapore – Bankruptcy No. 45 of 1986]

Bankruptcy – Bankruptcy Notice – Application to set aside – Judgment sum disputed.

The judgment debtor in the present case applied by way of motion to set aside the Bankruptcy Notice, the Order for substituted service of the Notice and the service itself. The judgment debtor submitted, *inter alia,* that

(1) the Bankruptcy Notice did not state the exact sum which the applicant was called upon to pay;

(2) the judgment debt is disputed and the applicant has made an application to set aside the judgment obtained against her in default of appearance.

Held, dismissing the application: (1) a Bankruptcy Notice which follows precisely the terms of a judgment, as in the present case, is valid even though the interest is not claimed as a fixed sum therein so long as it is capable of being calculated or ascertained by some formula or other means;

(2) there was no substance in the complaint that the Bankruptcy Notice did not state the exact amount payable by the applicant;

(3) the court cannot at this stage go behind the judgment and inquire into the validity of the debt, as it can in a petition. Accordingly, until the judgment in the original suit is set aside, the Bankruptcy Notice in this case conforms to the terms of the judgment and remains valid

Cases referred to:

(1) *Re Debtor 478 of 1908* [1908] 2 K.B. 684.
(2) *Re Easton* (1893) 10 Morr. 111; 9 T.L.R. 408.
(3) *Re a Debtor (30 of 1956)* [1957] Ch. 381.
(4) *In re Foster; Ex parte Basan* (1885) 2 Morr. 29.

MOTION.

Yap Seng Chaye for the applicant.
David Hew for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the debtor to set aside a Bankruptcy Notice which